



December 17, 2001

Mr. Leslie R. Sweet
Legal Advisor
Dallas County Sheriff Department
1333 North Industrial Boulevard, LB 31
Dallas, Texas 75207-4313

OR2001-5909

Dear Mr. Sweet:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156363.

The Dallas County Sheriff's Office (the "sheriff's office") received a request for a copy of the disciplinary file for two specified current or former sheriff's office employees. You indicate that you have released or will release some responsive information to the requestor. You claim, however, that a portion of the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Initially, we note that section 552.022 of the Government Code makes certain information public, unless it is expressly confidential under other law. One category of public information under section 552.022 is "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by [s]ection 552.108[.]" Gov't Code § 552.022(a)(1). The submitted information constitutes a completed investigation undertaken by the Internal Affairs division of the sheriff's office. Therefore, this investigation must be released to the requestor, unless it is expressly confidential under other law or is excepted from disclosure pursuant to section 552.108 of the Government Code. Since you claim that the submitted information is excepted from disclosure pursuant to section 552.101, we will address your claim.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected from disclosure under the common-law right to privacy. Information is protected from disclosure under the common-law right to privacy if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. See *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. See *id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

Here, the submitted information relates to an investigation of a sexual harassment complaint against a former sheriff's office employee. Although information relating to an investigation of a sexual harassment claim involving a public employee may be highly intimate or embarrassing, the public generally has a legitimate interest in knowing the details of such an investigation. See Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute his private affairs), 455 (1987) (public employee's job performances or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow); see also *Ellen*, 840 S.W.2d at 525. Based on our review of your arguments and the submitted information, we conclude that the information that we have marked, constituting the sheriff's office's conclusions and the affidavit of the person under investigation, comprises an adequate summary of the sexual harassment investigation. See *id.* at 525-26. Because these documents serve the public interest in the information at issue, the remaining submitted information must be withheld from disclosure pursuant to section 552.101 in conjunction with the common-law right to privacy. However, we note that portions of the information that comprises an adequate summary of the investigation constitute identifying information of victims and witnesses to the alleged sexual harassment. Accordingly, we conclude that the sheriff's office must withhold from disclosure the identifying information of victims and witnesses to the alleged sexual harassment that we have marked in the summary pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

In summary, the sheriff's office must withhold all submitted information, other than the summary that we have marked, from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. The sheriff's office must withhold from disclosure the information that we have marked in the summary pursuant to section 552.101 in conjunction with the common-law right to privacy. However, the remaining information in the summary must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald J. Bounds". The signature is fluid and cursive, with the first name "Ronald" and last name "Bounds" clearly distinguishable.

Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 156363

Enc. Marked documents

cc: Ms. Linda Sorrells
400 South Zangs Boulevard
Dallas, Texas 75208
(w/o enclosures)